

May 12, 2011

Dennis Funk

RE: Dennis Funk v. Military Department (MIL)
Allocation Review Request ALLO-11-012

Dear Mr. Funk:

We received your letter requesting a Director's review on March 17, 2011. On March 31, 2011, Karen Wilcox, Director's Review Coordinator sent a letter to both you and Laura Drybread, Human Resources Director, addressing the timeliness of the request.

Ms. Drybread responded with an email indicating that on February 14, 2011, Division Director Larry Pierce personally delivered the February 11, 2011 reallocation letter to you. She also included an email chain that included a February 16, 2011 email from you stating you received the letter "on Monday" verifying that you indeed received it on February 14, 2011 (Exhibit 4). You confirmed this in your April 4, 2011 email to Karen Wilcox (Exhibit 6).

In an April 5, 2011 email to Karen Wilcox, Director's Review Coordinator, you asked for an image of the envelope that contained your Director's Review request and stated that you would provide your response to the timeliness issue by May 1, 2011. Ms. Wilcox sent you the copy of the envelope you requested. However, we did not receive any additional information from you.

WAC 357-13-080(1) requires employees to request a Director's review within thirty calendar days "of being provided the results of a position review or the notice of reallocation."

WAC 357-04-105(1) provides, in part, the following:

. . . when the civil service rules require an . . . employee . . . to receive notice, the notice must be provided by personal delivery, United States mail, or by telephone facsimile transmission with same-day mailing of copies unless the specific rule requiring notice allows for alternative methods of providing notice such as electronic mail ("e-mail"), state mail service, commercial parcel delivery or campus mail service.

WAC 357-04-105(2) then provides, in part, the following:

. . . service of notice upon parties will be regarded as completed when personal delivery has been accomplished; or upon deposit in the United States mail, properly stamped and addressed; or upon production by telephone facsimile transmission of confirmation of transmission. When a specific rule allows alternative methods of service, service upon parties will be regarded as completed when it is actually received by the party to which notice is being provided.

Because the February 11, 2011 reallocation notification letter was hand-delivered to you on February 14, 2011, the deadline for requesting a review elapsed on March 16, 2011. Since we did not receive your request until March 17, 2011, it is untimely and the matter is closed.

Either party may appeal the Director's determination on timeliness to the Personnel Resources Board by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC. Please refer to any Collective Bargaining Agreement regarding appeal rights to the Personnel Resources Board.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The address for the Personnel Resources Board is 600 South Franklin, P.O. Box 40911, Olympia, Washington, 98504-0911.

If no further action is taken, the Director's determination becomes final.

Sincerely,

Teresa Parsons, SPHR
Director's Review Program Supervisor
Legal Affairs Division

c: Laura Drybread, MIL HR

List of Exhibits

1. Letter requesting Director's review from Mr. Funk received March 17, 2011
2. February 11, 2011 reallocation notification from Laura Drybread, MIL HR
3. March 31, 2011 letter requesting timeliness clarification from Karen Wilcox, DOP
4. April 1, 2011 email from MIL HR responding to timeliness question
5. February 16, 2011 email from Dennis Funk stating when he received reallocation notification
6. April 4, 2011 email from Dennis Funk to Karen Wilcox, DOP, stating he received reallocation notification on February 14.
7. April 5, 2011 email from Dennis Funk to Karen Wilcox, DOP, stating he will respond to timeliness issue by May 1, 2011.
8. April 5, 2011 email from Karen Wilcox, DOP, to Dennis Funk sending copy of Mr. Funk's letter requesting Director's review with image of envelope.